APPEAL NO. 010743

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on July 10, 2000. The hearing officer concluded that the first certification of maximum medical improvement (MMI) on March 13, 1997, with a zero percent impairment rating (IR), as determined by Dr. M on May 8, 1997, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)), and that the appellant (claimant) had disability from March 1, 1997, through March 31, 1997, with entitlement to temporary income benefits (TIBs) ending as of March 13, 1997, the MMI date. The claimant appealed these determinations on evidentiary grounds. In Texas Workers' Compensation Commission Appeal No. 001811, decided September 13, 2000, the Appeals Panel remanded the case for reconstruction of the record due to problems with the quality of the tape-recorded hearing record. On January 4, 2001, a remand hearing was held at which the parties reached agreement on the content of the record and no additional evidence was presented. The hearing officer subsequently reached the same conclusions to resolve the disputed issues. The claimant once again appeals these determinations, asserting that there was "no direct evidence" of his having received written notice of the IR and MMI date and that, even if he did, such notice was in English, a language he does not read. The respondent (carrier) urges in response that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not have disability after March 31, 1997, and that the MMI date (March 13, 1997) and the IR of zero percent determined by Dr. M became final under Rule 130.5(e). The claimant testified that the employer paid him his regular wage when he returned to work at light duty after his injury and that he continued to receive his regular wage until his employment was terminated on March 12, 1997. Dr. M, who treated the claimant, indicated in his March 13, 1997, report that after two weeks of light duty the claimant could return to his work as a carpenter. The claimant said he did not work after March 1, 1997, until he began to work part time in the restaurant of a friend in January 1998, a job he continues to perform. The hearing officer could conclude from the evidence that it was not because of his compensable injury that the claimant could not obtain and retain employment at his preinjury wages after March 31, 1997.

Concerning the finality of Dr. M's MMI date and IR, the claimant acknowledged receiving and opening certified mail from the carrier on June 2, 1997, and said that when he realized the correspondence did not concern his taxes, he set it aside. He further stated that although he has been a resident of the United States for 20 years and files tax returns with his wife, he cannot read any English and did not know what the carrier's correspondence said because he had no one present at the time to translate the

correspondence into Spanish. He maintained that he did not know about the MMI date and IR until his attorney informed him of them in December 1997. The carrier introduced a copy of its Notification Regarding Maximum Medical Improvement and/or Impairment Rating (TWCC-28) dated "05/30/97" addressed to the claimant which, among other things, advises of Dr. M's report and the zero percent IR. The carrier also introduced an internal document of the adjuster reflecting that the TWCC-28 and the Report of Medical Evaluation (TWCC-69) were sent to the claimant by certified mail and the U.S. Postal Service "green card" bearing the claimant's signature and the delivery date of "6-2-97." The Benefit Review Conference (BRC) report, while not substantive evidence, states the claimant's position as being that he received the TWCC-69 and TWCC-28 forms but did not consider them sufficient notice under Rule 130.5(e) because they were in English. The claimant's attorney at the hearing was also present at the BRC and the record does not contain a response from the claimant to the BRC report.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge